

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re Former Employees of Washington Mutual  
Bank v. FDIC as Receiver for Washington  
Mutual Bank, et al.

**Master File No. C09-0504 RAJ**

BARBARA A. POTASHNICK, individually,

NO.

Plaintiff,

COMPLAINT

v.

**JURY TRIAL DEMANDED**

FEDERAL DEPOSIT INSURANCE  
CORPORATION as receiver for Washington  
Mutual Bank; FEDERAL DEPOSIT  
INSURANCE CORPORATION in its  
corporate capacity

Defendants.

Plaintiff BARBARA A. POTASHNICK, brings this cause of action against  
Defendants FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for  
Washington Mutual Bank and in its corporate capacity, allege as follows:

**I. PARTIES**

1. Washington Mutual Bank ("Washington Mutual"), at all times material  
to the allegations in this complaint, was an entity headquartered and with its principal  
place of business in Seattle, Washington. Washington Mutual is not made a party to this

1 suit because it has been dissolved and placed into receivership with the Federal Deposit  
2 Insurance Corporation ("FDIC").

3 2. Upon information and belief, the Federal Deposit Insurance Corporation  
4 (FDIC) is a corporation and agency of the United States Government, with its principal  
5 place of business in the District of Columbia, and at all times material, is the successor  
6 and receiver for Washington Mutual. FDIC is made a defendant herein both as a  
7 receiver for Washington Mutual ("FDIC-Receiver") and in its corporate capacity  
8 ("FDIC-Corporate").  
9

10 3. Plaintiff BARBARA A. POTASHNICK is an individual currently  
11 residing in King County, Washington. Ms. Potashnick was an employee of Washington  
12 Mutual in Seattle, Washington at all material times.  
13

## 14 II. JURISDICTION AND VENUE

15 4. The United States District Court has subject matter jurisdiction over this  
16 matter pursuant to 28 U.S.C. §1331 and 12 U.S.C. §1821 AND 28 U.S.C. § 1346.

17 5. This Court has personal jurisdiction over all the parties.

18 6. Venue is proper pursuant to 28 U.S.C. 1391(e).

19 7. Venue is proper pursuant to 29 U.S.C. § 1332(e) and 28 U.S.C. § 1391.

20 8. Venue is proper pursuant to 12 U.S.C. § 1819(b)(2)(a) and 1821 (d)(6).

21 9. Plaintiff has complied with all procedural and administrative  
22 prerequisites to filing suit by presenting a claim to the FDIC which has been denied.  
23

24 10. Venue is proper pursuant to 28 U.S.C. § 2201.  
25  
26  
27

**III. FACTUAL BACKGROUND**

11. Plaintiff Barbara Potashnick entered into a binding contract with Washington Mutual (the “contract”) which contained a provision referred to as a “change in control” clause. The change in control clause provided for a lump sum payment to Plaintiff if Washington Mutual underwent a change in control.

12. According to the FDIC’s website, “On September 25, 2008, the banking operations of Washington Mutual, Inc - Washington Mutual Bank, Henderson, NV and Washington Mutual Bank, FSB, Park City, UT (Washington Mutual Bank) were sold in a transaction facilitated by the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC).” (Emphasis added.)

13. On or about September 25, 2008, Washington Mutual underwent a change in control.

14. Alternatively, in 2008, Washington Mutual underwent a change in control pursuant to the TPG investment.

15. Plaintiff fully performed all of her obligations under the contract.

16. Pursuant to that certain Purchase and Assumption Agreement, *See [http://www.fdic.gov/about/freedom/Washington\\_Mutual\\_P\\_and\\_A.pdf](http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf)*, FDIC retained the Washington Mutual liabilities to the Washington Mutual employees, including payment of employee contracts.

17. Plaintiff timely filed claims with the FDIC to recover funds due and owing based upon her employment with Washington Mutual.

18. The FDIC breached Plaintiff’s employment contract by refusing to honor Plaintiff’s claims.

1           19.     Plaintiff has been individually damaged by the wrongful conduct of the  
2     FDIC.

3           20.     The FDIC improperly disaffirmed Plaintiff's contract on the basis that  
4     the undertaking was burdensome and that disaffirmance would promote the orderly  
5     administration of the FDIC's affairs. In fact, the disaffirmance decision was revenue-  
6     neutral to the FDIC and entailed no additional expense to the FDIC.

7           21.     The Federal Deposit Insurance Act states that the FDIC "[s]hall pay all  
8     valid obligations of the insured depository institution .... " 12 U.S.C. § 1821(d)(2)(H).

9           22.     The Federal Deposit Insurance Act further obligates the FDIC to "allow  
10    any claim received on or before the date specified in the notice published under  
11    paragraph (32)(B)(i) by the receiver from any claimant which is proved to the  
12    satisfaction of the receiver." 12 U.S.C. § 1821(d)(5)(B).

13  
14  
15                   **IV. FIRST CAUSE OF ACTION:**  
16                   **BREACH OF CONTRACT**

17           23.     Plaintiff repeats and realleges each and every allegation set forth in the  
18    foregoing paragraphs as if fully set forth herein.

19           24.     Plaintiff had a binding agreement with Washington Mutual which  
20    included a change in control clause.

21           25.     Plaintiff had a binding agreement with Washington Mutual which  
22    provided for the funding of Plaintiff's retirement account, commonly referred to as the  
23    SERAP.  
24

25           26.     In or about September 2008, Washington Mutual underwent a change in  
26    control event.  
27

1           27.     The Federal Deposit Insurance Corporation ("FDIC") is a corporation  
2 and agency of the United States that acted as the successor and receiver for Washington  
3 Mutual.

4           28.     The FDIC breached Plaintiff's contract by refusing to honor the change  
5 in control provisions and refusing to pay the liability due thereunder.  
6

7           29.     The FDIC breached Plaintiff's contract by refusing to fund her  
8 retirement account.

9  
10                   **V. SECOND CAUSE OF ACTION:**  
11                   **EQUITABLE ESTOPPEL**

12           30.     Plaintiff repeats and realleges each and every allegation set forth in the  
13 foregoing paragraphs as if fully set forth herein.

14           31.     Washington Mutual made representations to Plaintiff that she would  
15 receive a change of control payment in the event that her employment was terminated.

16           32.     The FDIC, as successor in interest to Washington Mutual, contradicted  
17 and repudiated the representations to Plaintiff that she would receive a change of  
18 control payment in the event that her employment was terminated.

19           33.     As a result of the FDIC's contradiction and repudiation, Plaintiff was  
20 damaged.  
21

22           34.     The FDIC's contradiction and repudiation of Plaintiff's change of  
23 control and retirement benefits would result in a manifest injustice with no impairment  
24 of the exercise of government functions.

25                   **VI. PRAYER FOR RELIEF**

26           WHEREFORE, Plaintiff requests the following relief:  
27

1 35. Judgment against Defendant for direct and consequential damages in an  
2 amount to be determined at trial;

3 36. Attorney's fees and costs;

4 37. For such other and further relief as this court deems just and equitable.  
5

6 **VII. JURY TRIAL DEMAND**

7 38. Plaintiff and the members demand trial by jury of 12 pursuant to Fed. R.  
8 Civ. P 38 upon all issues.

9 DATED: this 20<sup>th</sup> day of November 2009.

10 BRESKIN JOHNSON & TOWNSEND, PLLC  
11

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